

1 DEPARTMENT OF COMMERCE AND INSURANCE
2 BOARD FOR LICENSING CONTRACTORS

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9 TRANSCRIPT OF THE PROCEEDINGS

10 September 18, 2009
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21 Cannon & Stacy
22 Court Reporters
23 117 Arrowhead Drive
24 Hendersonville, Tennessee 37075
25 (615) 822-9382
dl stacy@bellsouth.net

Reported by: Tracy Foley-Wilkes

1 BOARD MEMBERS PRESENT:

2 Mr. Keith Whittington, Vice Chairman

Mr. Frank Neal, Member

3 Mr. Jerry Hayes, Member

Mr. Marvin Sandrell, Member

4 Mr. Mark Brodd, Member

Mr. Ronnie Tickle, Member

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STAFF MEMBERS PRESENT:

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Mr. Michael Driver, Staff Attorney

8 Ms. Nicole Canter, Paralegal

Ms. Telise Roberts, Assistant Director

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1 MEMBER WHITTINGTON: I'd like to call
2 the meeting to order.

3 The first order of business is approval
4 of the agenda.

5 Has everyone had a chance to look over
6 the agenda?

7 MEMBER BRODD: So moved.

8 MEMEBER WHITTINGTON: I have a motion to
9 approve the agenda.

10 Do I have a second?

11 MEMBER SANDRELL: Second.

12 MEMBER WHITTINGTON: All in favor say
13 "aye."

14 THE BOARD: Aye.

15 MEMBER WHITTINGTON: Opposed, like sign?

16 (Pause)

17 MEMBER WHITTINGTON: Motion carries.

18 First item we have are approvals of
19 hardships under Tab number 1 in your books.

20 Again, these are --

21 MR. NEAL: Did you do a roll call?

22 MR. WHITTINGTON: No. I did not do a
23 roll call.

24 Starting at my left we will do a roll
25 call. If you will, please state your name and where

1 you're from.

2 MEMBER NEAL: Frank Neal. Memphis,
3 Tennessee.

4 MEMBER SANDRELL: Marvin Sandrell.
5 Columbia, Tennessee.

6 MEMBER WHITTINGTON: Keith Whittington.
7 Johnson City, Tennessee.

8 MEMBER TICKLE: Ronnie Tickle. Memphis.

9 MEMBER HAYES: Jerry Hayes. Paris.

10 MEMBER BRODD: Mark Brodd. Knoxville.

11 MEMBER WHITTINGTON: Now, under
12 Tab number 1 the hardships. These are approvals that
13 the director had us make in her absence.

14 I'll entertain a motion to accept her
15 recommendations for approval.

16 MEMBER NEAL: So moved.

17 MEMBER TICKLE: Second.

18 MEMBER WHITTINGTON: I have a second.
19 Any discussion?

20 (Pause)

21 MEMBER WHITTINGTON: All in favor say
22 "aye."

23 THE BOARD: Aye.

24 MR. WHITTINGTON: All opposed, like
25 sign?

1 (Pause)

2 MEMBER WHITTINGTON: Motion carries.

3 Now, I want to turn it over to Frank.

4 We've got a little discussion on the electronic bidding
5 process -- and this will be under Tab 2 in your book.

6 Frank, take it away.

7 MEMBER NEAL: Okay. Mr. Smith, I
8 believe you and representatives of ABC are here, if
9 you-all would come up.

10 MR. SMITH: I'm not sure of the
11 procedures. This is the first time I've appeared in
12 this format.

13 MEMBER NEAL: If you'll wait one minute.

14 Mr. Smith is an attorney who represents
15 Associated Builders and Contractors, for the benefit of
16 the board members who are not familiar with Mr. Smith --
17 and Mr. Pitts back there is Associated Builders and
18 Contractors.

19 The agenda is little bit less than
20 informative, I guess. We really didn't know what else
21 to call it because I think Carolyn, in her absence --
22 and Keith is taking her place -- we had questions about
23 electronic bidding in the past. But it's been several
24 years since we gave the Board's opinion on electronic
25 bidding.

1 This particular situation involves the
2 Memphis School System bidding procedures. And Mr. Smith
3 has written a letter to the secretary of the Board --
4 and I think all of you have a copy of it in your file --
5 which is very self-explanatory, overly brief.

6 I'll let Mr. Smith give a little more
7 conversation about this. The City of Memphis -- or the
8 Memphis School System is requiring that contractors
9 bidding on their work -- generals, i.e. -- provide
10 electrical and other subcontract bids -- I don't know
11 whether it's just electrical and mechanical -- to be
12 submitted to them 24 hours before the actual bidding of
13 the general contractor on projects.

14 That said, that certainly has -- in the
15 past -- not been the opinion of the Board as to the
16 procedures that are approved.

17 At that point, Mr. Smith, I'll let you
18 make your comments -- which you pretty well outlined in
19 your letter in this regard.

20 MR. SMITH: My name is Don Smith. I'm a
21 practicing lawyer here in Nashville. My firm is Smith,
22 Cashion & Orr. And we somewhat specialize in
23 construction and construction matters.

24 I'm here on behalf -- to represent the
25 three ABC chapters in Tennessee who have requested that

1 I make a presentation to you as to why we feel like the
2 Memphis bidding procedure is improper and is likely in
3 violation of Tennessee law and are requesting that the
4 Board notify the Memphis Educational Board that they
5 should cease to accept bids under this procedure.

6 Now, what is occurring is the Board of
7 Education in Memphis is bidding projects, and one of the
8 conditions of the bid is that certain trades have to be
9 listed, and those trades must bid 24 hours in advance of
10 the bid of the general contractor to the owner.

11 By way of example, electrical contractor
12 would have to submit his bid, and the general would have
13 to accept whatever that bid was 24 hours before the
14 general bid to the owner, in accordance with the bid
15 documents submitted by the owner.

16 Now, what they're -- I'm not aware of
17 any actual Tennessee authorities -- legal authorities
18 that would indicate one way or the other that this issue
19 has ever come before our courts. I do believe -- and
20 very strongly believe -- that this is in violation of
21 some of the statutes of Tennessee, namely, the
22 competitive bidding statutes and the Tennessee Licensing
23 Law. The competitive bidding statutes require
24 competitive bids. That's what it is.

25 Now, in order to obtain a competitive

1 bid, contractors negotiate with subcontractors up until
2 the time that the bid is submitted to the owner. Now,
3 after that period of time there can be no changes
4 because the licensing law provides that there will be no
5 bid shopping after the bid is submitted because the
6 individual electrical contractor, who is on the envelope
7 is the one that must receive the work.

8 Now, I'm going to join these two a
9 little bit together because they're intertwined, at
10 least somewhat. The licensing law was modified -- and I
11 frankly don't remember the date that we modified the
12 licensing law to include these provisions of listing the
13 electrical, as well as two other trades, on the envelope
14 or the bid was thrown out. I'm going to guess it was
15 around 1990. I was involved in it heavily. I
16 believe -- I know that Frank was involved in it. I'm
17 not sure that any of the other members of the board were
18 or not.

19 But the whole purpose of that -- and as
20 far as I know -- and I believe I'm correct on this --
21 the whole purpose of that was to prevent bid shopping
22 after the bid had been submitted. We had numerous
23 contractors who would submit a bid, get the job, and
24 then go around to all of the subs and rebid it -- which,
25 affectedly, was making a general contractor more money

1 and using a sub's bid and then not using that
2 subcontractor. That was the only purpose for that.

3 Now, it was never intended that those
4 provisions would limit negotiations prior to the bid
5 being submitted. Well, here the Memphis procedure
6 clearly limits negotiations because you have to bid it
7 24 hours in advance. That does not give the general
8 contractor an opportunity to continue to negotiate up
9 until he submits the bid -- which, of course, adversely
10 affects the public.

11 I believe that this board has the
12 responsibility of protecting the public and the
13 contractors. And I believe that the -- it's their
14 obligation to do that.

15 And without a doubt, the only person who
16 benefits from this procedure would be the electrical
17 contractor who got the bid. Any other electrical
18 contractors would not have an opportunity to negotiate
19 their price up until the time of the bid. But only the
20 one who did it 24 hours in advance. And that certainly
21 is harmful to the public in substantially every case. I
22 can't say with absolute certainty in all the cases, but
23 in substantially every case negotiations are being
24 conducted between the general and the subs up until the
25 time of the bid.

1 Many times they're marked out with pen
2 and pencil. If the bid provides, they can do so at the
3 actual time that it's submitted. This Memphis procedure
4 completely eliminates that and means that the public is
5 not getting the benefit of these two statutes.

6 Now, the competitive bidding statute
7 clearly shows that there must be competition in
8 accordance with the terms of those statutes -- which any
9 time that any party would interfere with negotiations --
10 or the rights to negotiate before that bid is submitted
11 is going to be in violation of the competitive bidding
12 statute, therefore, harm the public. Therefore, defeat
13 the purpose that the Legislature passed the statute for
14 in the first place.

15 Now, so there's no doubt in my mind, I
16 don't think anybody would seriously dispute that the
17 Memphis procedure is in violation of the competitive
18 bidding statute. I believe that the Memphis procedure
19 is in violation of the licensing law because it
20 affectedly does the same thing.

21 The law requires right now that you got
22 to list who you're going to use. And if that's
23 restricted in any way, then I believe that's -- I know
24 it's in violation of the intent of the law. And I
25 believe it's in violation of the letter of the law.

1 I will -- I sincerely would state to you
2 that the purpose of listing on the envelope -- the whole
3 purpose of that was to -- and the only purpose was to
4 prevent bid shopping after the bid had been submitted.
5 This is very important. It was not to prevent
6 negotiations prior to submission of the bid. And that's
7 exactly what the Memphis procedure does.

8 I would respectfully submit to this
9 board that this board notify the Memphis bidding
10 authority that it cease and desist this practice because
11 it's in violation of the law of Tennessee and the rules
12 and regulations of this board. And I believe that it
13 is. And I would respectfully submit and request that
14 this board do that.

15 I'm glad to answer any specific
16 questions or go into further detail. Lawyers have a bad
17 habit to continue to repeat the same thing and you-all
18 have too much to do for me just to stand up here and
19 talk all day and say the same things that I've already
20 said. But I'll be happy to answer any questions that
21 you might have.

22 MEMBER NEAL: I might add to the comment
23 that Mr. Smith has made that not only does it apply to
24 electrical performance, in your book, here, specifically
25 requires this for HVAC contractors and plumbing

1 contractors. So your three main components, which make
2 up 25 -- 35 -- 40 -- conceivably 50 percent of any job
3 that's being undertaken by a general contractor must be
4 submitted 24 hours ahead of a bid by a general.

5 To me, personally, that makes no sense
6 whatsoever. With that said, I certainly would agree
7 with Mr. Smith in his request. And I think this board
8 should notify the Memphis School System to cease and
9 desist this activity based on this form right here
10 because -- and the opinion of the Board is it's in
11 violation of -- in our opinion -- the licensing
12 requirements -- and as Mr. Smith states -- the
13 competitive bidding practices.

14 I'd be glad to make that in the form of
15 a motion, but we don't have to have a second right now.
16 As he said, if any of the rest of the board would like
17 to ask questions of Mr. Smith, please do so.

18 MEMBER WHITTINGTON: Well, let's go
19 ahead -- if you're going to do that in a motion, let's
20 do it in a motion.

21 You want to do a discussion or do you
22 want to do a motion?

23 (Pause)

24 MEMBER WHITTINGTON: It's up to you.

25 MEMBER TICKLE: I'd like to ask a

1 question first.

2 MEMBER WHITTINGTON: Fire away.

3 MEMBER TICKLE: We had -- when a bid is
4 submitted -- say I'm a general contractor, we have a
5 sealed bid, on the outside of that bid we're supposed to
6 list -- it's a requirement -- who the HVAC is, who the
7 plumber is, and who the electrical is. We have to list
8 that.

9 Now, are you saying that if XYZ
10 Electrical comes in with a low bid, I've got to use this
11 guy over here?

12 I can't use the people who I've already
13 got lined up? Is that what you're saying?

14 MEMBER NEAL: If you submitted your
15 electrical's name -- or the electrical has 24 hours --
16 and you get that bid 12 hours later, no, you can't use
17 him. It specifically says that you're disqualified if
18 you try to use anybody other than the guy that's already
19 submitted a bid 24 hours in advance.

20 MEMBER TICKLE: When I go bid a job, I
21 have all that stuff done ahead of time. I know who my
22 contract people are going to be.

23 If Keith does my plumbing, and he bids
24 that job \$100,000, and I have that on the outside that
25 Keith's going to do my bidding; and Marvin comes in at

1 \$90,000, it's too bad for me because I've already agreed
2 with Keith on my job. I'm not negotiating with Marvin.
3 I'm negotiating with Keith.

4 So Marvin goes in and does -- if he bids
5 with you -- and you and I are bidding against each
6 other -- and it just so happens you were lucky enough to
7 get Marvin \$10,000 less than Keith, your bid's going to
8 be \$10,000 less than mine.

9 Now, what it sounds to me like is, if
10 we've got to use the low bids. A general contractor,
11 our bids are always going to drop down to what we think
12 the job's going to be. That's what I'm hearing.

13 MEMBER WHITTINGTON: No. I don't think
14 that's what's being said at all. Memphis is requiring
15 that you submit that bid electronically the day before
16 its bid. It's still the same standard bidding
17 procedure. You submit your three subs along with your
18 bid, and you're stuck with them. That's the subs you
19 went in -- if I submit three separate subs, that's my
20 bid. There's no changing of the subs. It's just that
21 they wanted it submitted a day earlier -- which in
22 effect reduces the ability to negotiate with other subs
23 or --

24 MEMBER TICKLE: Reduces the ability of
25 the general contractor to negotiate up until the time he

1 submits.

2 MEMBER NEAL: They can't do that.

3 MEMBER BRODD: Not only that, does the
4 general contractor submit 24 hours beforehand his list
5 of three bidders to the school board -- or his list of
6 subcontractors to the school board?

7 When does he list those three bidders?

8 MR. SMITH: I don't have a copy --

9 MEMBER NEAL: They submit those 24 hours
10 in advance -- the HVAC, electrical, and plumbing.

11 MR. SMITH: And the general is bound by
12 that.

13 MEMBER BRODD: He cannot use a bid that
14 comes in later than that. He doesn't have to submit to
15 the school board until the day his bid is due.

16 MR. SMITH: He doesn't have to bid -- I
17 mean -- that's right.

18 MEMBER BRODD: It's on the general
19 contractor to make sure he doesn't accept a modified bid
20 after that 24-hour --

21 MR. SMITH: He can't. He's got to use
22 that contractor.

23 MEMBER TICKLE: It's already done. It's
24 already been submitted. He doesn't have a chance to go
25 back and renegotiate. The way most jobs are, you have

1 24 hours --

2 MEMBER BRODD: To the City -- or to the
3 school board?

4 MR. SMITH: They submits to the general,
5 and the general submits 24 hours in advance to use those
6 people.

7 MEMBER BRODD: Okay.

8 MR. SMITH: So he can't negotiate -- for
9 that 24 hours he cannot negotiate. If you're prepared
10 to -- I hate to say this -- but if a general and a sub
11 are prepared to violate the complete spirit of the
12 licensing law as it now exists, I suppose as long as the
13 bid had not been -- the final bid had not been
14 submitted, you could bid shop with that particular
15 subcontractor or say I'm not going to bid it.

16 MEMBER BRODD: Okay.

17 MEMBER NEAL: There's all kinds of
18 ramifications that come from this because the general --
19 as it says on the form -- submits the form, too. He
20 doesn't just submit his bid. He submits this form.

21 MEMBER BRODD: He's submitting --

22 MEMBER NEAL: He's submitting to use
23 these people. And as Mr. Smith's saying, that will
24 enable him, again, to really power play these subs by
25 virtue of saying in the last 24 hours I've got three

1 other bids. And you know you're going to get your price
2 down. And the general -- electrical can say, well, I'm
3 not going to do it. And he can argue with the City of
4 Memphis. If somebody else has used that other name,
5 they don't -- you know, they don't have any ability to
6 make any changes.

7 And the other thing about it is -- your
8 question -- and the thing that bothers me about it is
9 that gives the City of Memphis the right to pick and
10 choose who they want on these contracts because they
11 already know.

12 And then let's say you're the general
13 and you get the job, but you didn't list these three
14 people, and they say, well, that's who you're going to
15 use. You may not want to work with them at all.

16 MEMBER TICKLE: It sounds like I could
17 be forced to use somebody who I don't want to use.

18 MEMBER NEAL: You could.

19 MEMBER TICKLE: You're saying I could
20 be?

21 MEMBER NEAL: Yes.

22 MEMBER WHITTINGTON: Is this all due to
23 electronic bidding process?

24 MR. SMITH: I'm not sure. I don't think
25 so. I'm not sure that electronic bidding process is

1 really the issue. This can be done whether you had
2 electronic bidding process or not.

3 MEMBER WHITTINGTON: It seems like,
4 reading the correspondence, with the lady down at
5 Memphis City Schools that -- she says she's trying to
6 come up with a better way to handle our electronic
7 bidding process. So I think this is what she's done, is
8 she's required them to submit this earlier.

9 Why don't you just do away with the
10 electronic bidding process until you can come up with
11 procedures to receive those bids. That's what I would
12 say to the Memphis City Schools. And go ahead and go
13 back to the same day bidding process with an envelope
14 and bidders and names listed on the outside of the
15 envelope. The way it's done now.

16 MR. SMITH: There's nothing wrong with
17 that.

18 MEMBER NEAL: It's real simple. They'll
19 just call TDOT, and they'll tell them who to contact.
20 Then call Metro, and they'll tell them who to contact.
21 They both operate under electronic bidding process
22 currently. That was done back in '06. The notes from
23 our board meeting back then is how that happened.

24 But, again, you know, I think this is
25 totally inappropriate on the part of the Memphis City

1 School System to make this sort of requirement.

2 MEMBER WHITTINGTON: Any other
3 questions?

4 MR. DRIVER: If I may -- first, let me
5 thank Mr. Smith for coming and speaking with us today.

6 But what I would like to I guess point
7 out to the Board is, although there are requirements in
8 62-6-119 as to what has to be included on the
9 envelope -- I think we all agree on that -- there is
10 nothing in that law that specifically states one way or
11 the next how soon or how far in advance the person
12 wanting the bid can require that information.

13 Now, what I'm not trying to tell the
14 Board is whether or not -- obviously, it's within the
15 purview of the Board that this is a bad policy or not.
16 What I caution the Board from doing is housing it in the
17 language of an order and in the language of cease and
18 desist. I would certainly -- if it's the Board's
19 decision to -- advise the Board against writing a letter
20 respectfully requesting the School District to
21 reconsider its policy.

22 What I'm saying is, I'm not aware of any
23 provision in the licensing law that this is violating --
24 and that, again, is not saying that it's not
25 violating -- as Mr. Smith said -- the spirit of that

1 law.

2 And I don't want you to think I'm
3 suggesting one way or the next on that. I am not, at
4 least at this point, familiar enough, off the top of my
5 head, with the competitive bidding law to give an
6 opinion on that one way or the other. But also, that
7 law is not, I guess, within the enforcement authority of
8 the Board.

9 Again, to reiterate, this is not to
10 try -- if it's the Board's decision to do so -- to
11 dissuade the Board or to encourage the Board on action.
12 Again, I would simply caution the Board as to the
13 language -- should they choose to send a letter -- that
14 they use in that letter, as I don't see any provision in
15 62-6-119 or in any of the other laws or regs that this
16 practice violates.

17 That's all.

18 MR. SMITH: We don't have an objection
19 on procedural-wise how the Board notifies the City of
20 Memphis to cease doing this. And I'm not standing here
21 advising you -- telling you that if the City of Memphis
22 refused to do that what you should do. I'm telling
23 you -- I'm recommending to you -- and I believe it to be
24 true -- that you notify the City of Memphis that they
25 should cease this practice. And I think you can do that

1 in accordance with the competitive bidding law, as well
2 as clearly the spirit, and I believe the letter of the
3 law of the licensing law.

4 We don't necessary -- he doesn't
5 necessarily disagree with me. It's more of a -- I think
6 you're talking about more of a procedural aspect than a
7 substantive aspect.

8 VICE CHAIR WHITTINGTON: Well, I'm
9 reading 62-6-119, and I agree with what Michael says.
10 It doesn't say when the bid should be submitted.

11 Now, is there some other place you can
12 explain to us in the law that there are time limits or
13 constraints?

14 MR. SMITH: No. Except for the fact
15 that it contemplates -- that's listing on the envelope.
16 So by listing on an envelope -- by definition, it could
17 be changed prior to the envelope being submitted --
18 which by innuendo or intent would say that if you're
19 using the envelope procedure -- the way bidding was done
20 when that was drafted -- you're using the envelope
21 procedure, you couldn't change the envelope 24 hours in
22 advance. Now, that statute clearly allowed you to do
23 that.

24 MEMBER NEAL: Well, it says prior to the
25 opening of the envelope, the names of all the

1 contractors listed thereon should be read aloud on the
2 envelope -- blah, blah. You know, this is really a
3 simple matter. You can make it as legalistic as you
4 want to make it. It's real simple. From a layman's
5 point of view, the City of Memphis -- or anybody -- puts
6 out a contract with a bid. They give you a bid opening
7 date. Okay. And a time. And that date and time, to my
8 knowledge, is never specified that you turn in part of
9 your bid in advance.

10 Now, in Carolina, for example, they take
11 separate bids from the County. You bid directly to the
12 State. The general contractor is then assigned those
13 bids. If that's what the Memphis School System wants to
14 do down there, that's fine. Let them have at it. But
15 as long as they're going to do it in force with how most
16 anybody would interpret the law -- other than maybe
17 lawyers, that is -- that you said this is the bid date
18 and you turn it in -- and God knows how long, you list
19 on the outside of the envelope the mechanical, HVAC,
20 plumbing contractors. It's real simple.

21 Now, to arbitrarily decide that you want
22 to take those in advance and not really say what we're
23 going to do with them, I think that's certainly -- by
24 anybody's interpretation -- a violation of the
25 competitive bidding aspect.

1 Now, again, the fact that it doesn't say
2 something on 62-6-119 -- I don't want to give them the
3 benefit and a lay's opinion or make a law to say
4 something it doesn't say. If it doesn't say something,
5 it doesn't say it either way. Doesn't say we can
6 either.

7 That being said, my interpretation is
8 don't say we can, so you can't do it.

9 MR. DRIVER: That is exactly what you
10 just said you didn't want them to allow them to do --
11 make the law say something it doesn't say.

12 MEMBER NEAL: That's what they're trying
13 to do.

14 MR. DRIVER: Isn't that, in fact, what
15 you said you just did?

16 MEMBER NEAL: It doesn't say you can't.
17 So I'm not going to say that you can.

18 MR. SMITH: But by implication, when you
19 list -- before the envelope is turned in -- by
20 implication, that means that it can be changed up until
21 the time that the envelope is turned in. But not prior
22 to that.

23 I mean, by good interpretation of that
24 statute, by saying that it's got to be listed on the
25 envelope, then you can change that up until the time

1 that that's submitted. And that is a limitation.

2 MEMBER TICKLE: I still don't
3 understand. Somebody is going to have to help me out.

4 I'm thinking like you, Frank, I think.
5 If I have an electrical, plumbing, and mechanical
6 person, and they send their bid in 24 hours in advance,
7 and there's three -- these three all send theirs in --
8 and I'm a general contractor. I have -- when I do my
9 bid, I have to list who I'm going to have as a general
10 contractor.

11 Now, just because all three of those
12 send in -- am I going to have to use the lowest bid?

13 MEMBER BRODD: You have to commit to
14 using --

15 MR. DRIVER: -- 24 hours before you
16 actually have to bid the project; is that correct?

17 MEMBER TICKLE: What's the point of them
18 sending their stuff in? Who cares? Who cares if they
19 send their stuff in 24 hours in advance?

20 I don't understand the problem there,
21 because that doesn't mean anything because I'm the
22 general contractor, so I'm going to use who I got.

23 MEMBER NEAL: No. You have to use --

24 MR. SMITH: How do you know 24 hours in
25 advance who you're going to use? They want to change

1 that.

2 MEMBER TICKLE: I typically know. When
3 I get my bids done, I've worked myself to death and I've
4 got everything down. I don't wait until the last minute
5 and all of a sudden change. When I send my plans out to
6 bid, I give my subcontractors a date and I say I want
7 this stuff back on September 22nd because I've got to
8 submit a bid on September 26th. If you don't send me my
9 stuff by September 22nd, then just don't even bother.

10 MEMBER NEAL: Are you the only one
11 bidding?

12 MEMBER TICKLE: I'm the general
13 contractor bidding, but there's -- everybody is bidding
14 because everybody knows the same game plan. We all know
15 that your bid is supposed to come in in X number of
16 days. So I'm getting my stuff together on the front
17 end. And my subcontractors -- I ask a bunch of them to
18 all send me a bid.

19 I do the same thing on a house. They
20 all send my bids in, and I gather all my information. I
21 know what my stuff is going to be weeks before it's time
22 to submit because I'm hoping that I'm going to be the
23 low bidder. If I'm not, I'm just not.

24 MEMBER NEAL: I can understand on a
25 house, but let's use that as an example.

1 MEMBER TICKLE: I'll give you an
2 example. I just got through bidding an alcohol recovery
3 center, and I was told when it had to be in. And I had
4 everything bid prior to that, just like everybody else.

5 There was five -- six people -- six
6 general contractors all did the same thing. We all
7 wrote everything down. Everybody had their stuff on an
8 envelope, and we sent it in. We didn't negotiate until
9 the last minute. We all knew -- everybody had all their
10 stuff altogether prior to that.

11 I don't know anybody who bid that job
12 who waited 24 hours and tried to negotiate down because
13 I think everybody already had their stuff together.

14 I'd bid a church the same way.

15 VICE CHAIR WHITTINGTON: I agree with
16 what Marvin just said. There are a lot of people who
17 don't do it that way.

18 MEMBER TICKLE: Maybe that's why I don't
19 get jobs.

20 (Laughter)

21 MEMBER SANDRELL: I'm a mechanic. I do
22 mechanical, plumbing, and electrical. I'll turn in the
23 bid to Keith maybe ten minutes before the job goes.
24 Somebody will call Keith -- and I'm not saying just
25 Keith -- Marvin's bid is \$10,000, you want to beat that?

1 Yeah, I'll do it for \$5,000. That happens so many
2 times.

3 MEMBER TICKLE: I agree with you.

4 VICE CHAIR WHITTINGTON: The thing I
5 think we need to look at here is it goes back to the
6 purpose of this form to start with. And I think it's
7 the Memphis City Schools trying to institute electronic
8 bidding. That's the way I read the e-mails that were
9 sent to Carolyn, trying to resolve the process. She has
10 asked Carolyn for an opinion -- which Carolyn has
11 brought it to the Board for us to give an opinion.

12 Now, I think a -- possibly -- and I'm
13 going to kick this out to Michael -- a way for us to
14 resolve this whole matter is for Memphis -- for us to
15 tell Memphis that we think that the matter of their
16 receiving electronic bids is not proper, and as Frank
17 said, it's easily gotten around -- there are actually
18 electronic bid receptors or programs that they can
19 purchase to receive their electronic bids that will
20 relieve them of having to receive these bids openly and
21 publicly 24 hours in advance. And we could maybe direct
22 Memphis City Schools to change their method of receiving
23 their bids electronically.

24 MR. SMITH: Well, then that will fall
25 within the terms of statute. That means everybody bids

1 at the same time and you can change or not change --
2 whatever you want to do as a bidder -- up until the bid
3 time.

4 MR. DRIVER: And, again, as I said
5 earlier, while I have no problem with you doing as you
6 said, I would, again, caution the Board as to the
7 language in any such letter so as far as ordering, as
8 opposed to requesting that they reconsider.

9 And as I've already informed you, at
10 some length, I'm not personally certain that this is
11 directly in violation of law -- which is not to say that
12 the Board, in its opinion, thinks this is a policy
13 against the spirit of the law.

14 VICE CHAIR WHITTINGTON: I think it
15 violates the spirit.

16 MR. DRIVER: And, again, as I said a
17 couple times before, I have no problem with the Board
18 requesting that the Board change this because the Board
19 feels that it violates the spirit of the law. But I
20 would caution the Board, again, from saying the Board
21 hereby demands that you cease and desist this activity
22 because it violates this law. I simply don't see
23 anything in 62-6-119 that violates it.

24 MEMBER NEAL: Okay. I'll make another
25 motion then. My motion this time will be impossible. I

1 suggest that Mr. Smith and our attorney get together and
2 draft a letter to the Memphis School System that they
3 can agree between themselves, as lawyers, since -- you
4 know, that the Board has an opinion, but it's kind of
5 immaterial.

6 You-all draft a letter to the City of
7 the Memphis and the Board will be glad to -- whatever
8 you-all agree to send to them. That'll be my motion.
9 If the Board agrees with that? That way we don't have
10 to step on anybody's toes about writing a letter that
11 shouldn't be written.

12 MR. SMITH: One question --

13 VICE CHAIR WHITTINGTON: Let us deal
14 with the motion first.

15 Do we have a second?

16 MR. BRODD: Second.

17 VICE CHAIR WHITTINGTON: Is there any
18 discussion?

19 (Pause)

20 VICE CHAIR WHITTINGTON: All in favor
21 say "aye."

22 THE BOARD: Aye.

23 VICE CHAIR WHITTINGTON: All opposed,
24 like sign?

25 (Pause)

1 VICE CHAIR WHITTINGTON: Motion carries.

2 MR. SMITH: I understand -- so that
3 we're correct, I understand that the Board is -- we're
4 worried about a matter of the form on how to notify. If
5 the intent is to say that this is in violation of the
6 intent -- we may not word it that way -- but it is in
7 violation of the intent of the law --

8 MEMBER NEAL: If that's the opinion of
9 the Board.

10 MR. SMITH: That's what I'm saying.

11 MEMBER TICKLE: That's our opinion.
12 That's how we all feel.

13 MEMBER NEAL: You attorneys may have a
14 different --

15 MR. SMITH: We'll get it drafted.

16 VICE CHAIR WHITTINGTON: Okay. And
17 you-all get copies e-mailed to all the board members and
18 let us correspond back to the Board. We'll correspond
19 as fast as possible so we can get this problem taken
20 care of.

21 MR. DRIVER: Okay.

22 VICE CHAIR WHITTINGTON: Moving along.
23 Thank you, Mr. Smith.

24 MR. SMITH: Thank you.

25 MR. PITTS: I'd like to thank the Board.

1 I'm Bob Pitts with Associated Builders and Contractors.
2 Just for informational purpose, this request came to
3 you-all as a result of ABC -- which is an umbrella grade
4 association representing both generals and subs.

5 We spent literally hours when it was
6 drafted dealing with the inclusion of people on the
7 outside of the envelope. Well, whatever may or may not
8 be going on now, I believe I can honestly say to you
9 that nowhere in the state of Tennessee -- up until
10 now -- has there been public bidding with the submission
11 of an envelope at the time of the general's bid only,
12 with the names of those required subs listed on the
13 outside of the envelope.

14 This board, some time ago, with the
15 request of a city or two, looked favorably on electronic
16 bidding, as I understand it. But never has this last
17 issue come up until the school system in Memphis. They
18 are basically asking you to validate what it is they
19 want to do. And the fact is, that's never gone on
20 before.

21 Now, the Board, in thinking about this
22 for down the road, if we need further clarification in
23 the law, that's a subject to be addressed in the
24 legislature session -- that we're more than happy to
25 work with you on -- but their request was only in

1 respect to electronic submissions. Then we're going to
2 be in the situation -- well, what about just the
3 envelope? So there would become an inconsistency here
4 if you had not made a recommendation today. And we
5 thank you for that.

6 MEMBER NEAL: Thank you, Mr. Pitts.

7 ABC, as we know, is a multi-sectional
8 operation. They have an East Tennessee chapter, a
9 Middle Tennessee chapter, and a West Tennessee chapter,
10 and involves a lot of contractors, so --

11 VICE CHAIR WHITTINGTON: Okay. Next
12 item on the agenda is FIN 48.

13 Again, I'm going to let Frank do the
14 introductions and explanation of this.

15 MEMBER NEAL: We have the benefit of a
16 dignitary in our office -- well, no, two. The county
17 firm of Davidson, Golden & Lundy represented by
18 Mr. Robert Davidson and Mr. Jim Lundy, and they are here
19 at the request to enlighten the Board in respect to
20 F-I-N or F-E-N -- whatever that initial is. What is it
21 there?

22 VICE CHAIR WHITTINGTON: F-I-N 48.

23 MEMBER NEAL: This came about because of
24 Matthew Vogeler -- our staff accountant -- having
25 conversations with an auditor and his comments to

1 Matthew about the acceptance by the Board of reviewed
2 financial statements that do not specifically address
3 FIN 48. And during conversations with myself and
4 others, it became, in my opinion, necessary for the
5 Board to hear an opinion from an accounting firm that
6 probably does more business with contractors than any
7 accounting firm -- in this area anyway. And that is
8 Davidson, Golden & Lundy. They were kind enough to
9 agree to come and give the Board the benefit of their
10 knowledge and expertise.

11 That being said, because each of you at
12 times have reviewed financial information being
13 submitted to the Board, and we need to make sure that we
14 all are on the right page concerning FIN 48 -- that
15 said, Mr. Davidson and Mr. Lundy.

16 MR. DAVIDSON: Thank you.

17 I appreciate the opportunity, gentlemen.
18 I'll try to make this brief, realizing that talking
19 about our accounting principles has got to be one of
20 your most boring things on your agenda today.

21 I'm Robert Davidson, my partner --
22 James Lundy here (indicating) for the benefit of some of
23 you who don't know us -- and contradicting anything
24 Mr. Hayes might have said about us before our arrival --
25 our firm specializes in construction. We represent

1 about 300 contractors around the country in our office
2 here in Nashville and one in Orlando, Florida.

3 I've served for three years on the AICPA
4 National Construction Committee. I was the chairman of
5 that committee. Jim is the present chairman of that
6 committee. That's the committee that governs accounting
7 rules for the construction industry nationwide.

8 He and I have spoken in all 50 states.
9 We've been published a hundred times. We really do
10 this. At the end of this month the AGC conference in
11 Las Vegas, I'm going to speak at that about this very
12 subject. FIN 48 will be part of my presentation to that
13 group. I present that just to tell you that we're kind
14 of geeked out on this subject and we're pretty familiar
15 with it.

16 The jargon here is FIN 48. That's what
17 accountants call it, but the correct terminology is
18 Financial Accounting Standard Board Interpretation
19 Number 48, so it gets an abbreviated term. But the
20 title of it is Accounting for Uncertainty in Income
21 Taxes -- an interpretation by the FASB.

22 FIN is something the accounting
23 profession considers to already have been a rule. It
24 just has been alerted to the fact that there's been a
25 problem in the world. And they'll issue an

1 interpretation that emphasizes that and stress it a
2 little better.

3 So this is really an interpretation of
4 an older accounting rule that came out in 1992. And
5 that's referred to as FASB 109 -- there's a lot of
6 little abbreviations here.

7 I've got a little outline here I'll read
8 from. And I've got copies to hand all of you, so you
9 can have it and make it part of the record, if you need
10 to.

11 But FIN 48, quite simply, is a heads up
12 for CPAs to apply the principles that existed under
13 FASB 109, but needed clarification and emphasis. It's
14 not new GAAP, but a reminder to CPAs of their
15 professional responsibility to disclose and accrue the
16 correct and honest amount owed for income taxes.

17 FIN 48 was required as a result of
18 various accounting firm and corporate scandals involving
19 GAAP reporting and illegal tax practices. Enron,
20 Worldcom, Global Crossing, etc. -- all of those had an
21 element to them that had some very aggressive and
22 illegal tax schemes that were involved in that. Part of
23 their demise was the fact that those firms -- it was
24 discovered later that they owed millions of dollars in
25 income taxes and those liabilities were not recorded.

1 Five of the top ten accounting firms in
2 America have had partners indicted and convicted for
3 promoting and selling illegal tax shelters and schemes.

4 So the accounting profession said, wait
5 a minute, if we've got an accounting firm out there
6 that's selling a scheme to someone -- and there's some
7 bizarre ones in construction, just like there are in
8 other professions -- some of those schemes, you know,
9 might go into detail how you can write a piece of
10 equipment off into a job, or it might allow you to
11 depreciate a building over five years instead of
12 39 years.

13 There are all kinds of schemes being
14 cooked up by accounting firms who are a lot smarter and
15 probably more conniving than we are, but it gets them in
16 trouble.

17 And many, many CPA firms have paid civil
18 claims. With record profits from 2000 to 2005, many
19 corporations used these tax shelters and off-shore tax
20 schemes.

21 So that all created this FIN 48.

22 You've got a series of e-mails -- I
23 think Matt has -- from some accountants that, in our
24 opinion -- and the opinion of everybody who specializes
25 in construction, at least -- they are way, way

1 overreacting to the requirements of FIN 48, completely.
2 Certain members of the accounting profession have
3 overreacted, and furthermore, in our opinion, are
4 completely wrong with their interpretation. It is not
5 expensive and time consuming to implement. There's no
6 requirement that you hire a second CPA to review your
7 tax return, which is being circulated.

8 And most CPA audit firms also prepare
9 the contractor's tax return and are very familiar with
10 the methods and positions. Most contractors are not
11 remotely affected by FIN 48 unless they are using an
12 illegal or very questionable tax method or scheme.

13 Our firm has had no client subject to
14 provisions of FIN 48 since it was issued -- or for that
15 matter, FASB 109 that required any kind of qualification
16 of an opinion. To quote the head of the West Coast
17 Division of Travelers Surety -- I spoke in a seminar
18 with him and he presented this and later he e-mailed me
19 these exact words.

20 This is from Travelers Surety about
21 FIN 48:

22 "There has been some discussion about
23 FIN 48 recently, and I wanted to let everyone know the
24 status of this proclamation and how it affects us as a
25 surety.

1 "First, please keep in mind that FINs
2 are an interpretation of accounting rules that the FASB
3 considers to be already applicable. Simply stated,
4 FIN 48 says that if an entity takes a tax position that
5 is 'more likely than not' to fail in a tax examination,
6 they must book a liability and include a disclosure."

7 And that's the exact wording out of
8 FIN 48, if it's "more likely than not" that the IRS will
9 just simply disallow the deduction you need to go on and
10 admit that on your financial statement.

11 "Second, I think it's a good rule for us
12 here at Travelers, as users of the financial statements.
13 It would force entities with whom we do business -- or
14 in your case I'm adding issue licenses -- it would force
15 entities with whom we do business to disclose and
16 quantify unreasonable tax positions, which would assist
17 in our underwriting."

18 The same applies to the Board here, if
19 anyone issues a qualifying opinion, in our opinion, the
20 Board has to seriously consider not permitting the
21 license.

22 Unqualified opinion is stating that
23 these financial statements -- and it might depend on the
24 qualification -- especially for FIN 48 -- if you got a
25 financial statement that was qualified for FIN 48

1 because the accounting firm did not want to implement
2 it, they're basically telling you that they are more --
3 they are, in their mind, they are more likely than not
4 to receive an adverse opinion from accounting -- from an
5 IRS office if they're audited.

6 Contractors who use acceptable tax
7 methods that are specifically included in the tax code
8 and regulations are not impacted by FIN 48. The exact
9 wording is that those methods -- let's see, I lost my
10 place -- but if those methods are immaterial -- I lost
11 where I was reading -- let me read those methods:
12 Completed Contract, Cash and Accrual -- other methods
13 that are specifically allowed under the code: The
14 Completion Method required by Code Section 460 and the
15 related elections for the 10 percent deferral method,
16 the residential, the contract exclusion, the G&A
17 allocation, the accelerated depreciation, look-back
18 elections and allocations, cost and percentage
19 depletion, and all the energy tax credits -- none of
20 those things are affected by FIN 48 because they are
21 statutory and they're reasonable.

22 Contractors using incorrect methods and
23 tax shelter schemes are affected, as they should be.
24 Tax methods that are immaterial and only create timing
25 differences have no effect. So this has no effect, for

1 instance, if the owner of the company has some travel
2 expenses that are disallowed because that's immaterial
3 and wouldn't affect whether they would be a strong
4 enough financial statement.

5 What does FIN 48 require the CPA to do?

6 Apply these standards: Is it a
7 frivolous tax scheme? Is it more likely than not?

8 And the definition on FIN 48 is more
9 than 50 percent -- so if you just think you're 20
10 percent wrong, you don't even have to disclose a FIN 48.
11 So if you, in your mind, know that you're more than 50
12 percent likely to fail -- and I'll say as a
13 professional -- I've been doing this for 33 years -- I'm
14 always aware. There really is never any doubt for a
15 CPA. They know which items will fail and which ones
16 won't. But if that's the case, it's frivolous and it's
17 more likely than not it will fail, you have to disclose
18 it and accrue it on the financial statement.

19 If you don't require that, as a board,
20 the contractors that are doing that legally and
21 legitimately have that liability accrued, the
22 contractors that do not do not. If you'll allow a
23 qualified opinion, you're basically saying that you're
24 going to grant a bigger license limit to people who
25 cheat on their tax returns. That's, in essence, what

1 you're saying.

2 Many CPAs are complaining and reluctant
3 to adopt FIN 48 because it will give the IRS a road map
4 to follow when auditing the contractor. Now,
5 fortunately that's true. That's the one complaint
6 they're right about. If you've done something -- if you
7 have to disclose the financial statement and the IRS
8 gets a copy of the statement, they're kind of getting a
9 heads up.

10 The reality, though, is most auditors,
11 if you're using one of these offshore schemes or
12 depreciation schemes, those aren't hard to find anyway,
13 so I don't think those are as big a negative as people
14 think.

15 In my own seminars that I teach I
16 include the following: If a contractor is engaged in
17 questionable tax practices that will probably result in
18 additional liability, it was already required to be
19 accrued and disclosed. I think the real effect of
20 FIN 48 will cause CPAs and companies to clean up their
21 act and discontinue dishonest tax practices.

22 The bottom line is we think that FIN 48
23 is a good rule. It's not expensive to implement. We
24 don't think there's any reason for an accounting firm to
25 qualify an opinion. The Contractors Board should not

1 accept a qualified opinion for any reason, including
2 FIN 48 departure, unless it's a real isolated and
3 specialized circumstance.

4 And, finally, I think probably the issue
5 that is radically being affected -- and FIN 48 touches
6 on it -- and I know the Board has struggled with this --
7 there is an amendment to FIN 48 that's forthcoming,
8 requiring a better disclosure and perhaps even accrual
9 for pass through entities to accrue the taxes on their
10 balance sheet that C-corporations have to accrue now.

11 When you guys evaluate the license for a
12 C-corporation, they have the taxes on the balance sheet
13 deducted from the working capital. When you do it for
14 an S-Corp or LLC, taxes are not on there because they're
15 not owed by that entity. They're owed by the
16 shareholders.

17 So it's already a disparity and
18 unfairness that exists that S-Corps and LLCs are given
19 better balance sheets than C-Corps are now. New
20 accounting is going to require S-Corps and LLCs to put
21 something on their balance sheet. We already do it on
22 the disclosure because we think FIN 48 requires that.
23 But that's subject to some interpretation.

24 Sorry for the dissertation, but maybe
25 that can shed some light on it. Jim and I are here for

1 questions or --

2 MEMBER NEAL: Well, I think, in my
3 case -- I'll let the rest of the Board have theirs.
4 Certainly, you feel comfortable in saying -- and the
5 Board, I think, totally agrees -- and that is we're not
6 going to accept qualified opinions. If there is one,
7 we're going to have to look into it and determine why
8 it's qualified and this, that, and the other.

9 The other thing is, it's not your
10 interpretation at all that an accounting firm cannot
11 give anything, other than a qualified opinion. If, in
12 fact, they don't have a separate CPA firm that handles
13 their taxes. So that theory had been expressed to our
14 in-house accountant, and I think that certainly you
15 presented sufficient information that we shouldn't
16 concern ourselves with that aspect or that comment
17 either.

18 MR. DAVIDSON: That's right. And let me
19 clarify that, too. If our firm develops something
20 proprietary that we came up with a scheme for
21 Jerry Hayes' firm to set up an offshore company and run
22 all of his payments through that offshore entity and he
23 wouldn't pay any income tax, technically, since we're
24 charging him for that scheme, and it's not statutory,
25 it's more of a scheme for us to do the audit. Also, we

1 probably would have a conflict of interest.

2 For an accounting firm it's just simply
3 preparing the return within the statute and we generally
4 use accepted tax code principles. There is no conflict
5 of interest from that company doing the tax return
6 statement. In fact, probably 99 percent of the
7 statements and tax returns in America are done by the
8 same firm.

9 So that kind of an idea is totally
10 foreign and is not being talked about on a national
11 scale. The first I've seen of it has been in the series
12 of e-mails that Matt got from that. I think there's
13 where the accounting firm -- maybe they're trying to err
14 on the side of cautionness, and, you know, I don't want
15 to throw them under the bus. Or maybe they represent a
16 contractor that's taking a real aggressive and illegal
17 or questioning stand.

18 If we had a contractor doing that, you
19 know, we might have a FIN 48 requirement, but I would
20 tell the Board that if we're issuing an opinion that we
21 think there's a material liability that's more likely
22 than not to be owed, it's audited. If we tell you that,
23 and the contractor won't let us disclose that -- a
24 qualified opinion means the contractor says don't
25 disclose that, don't implement it, qualify my opinion.

1 Well, what does that really tell you?
2 We're not putting it on the balance sheet. We're
3 qualifying an opinion as to FIN 48. And that, to me,
4 would be a red flag to you, too, that that could be a
5 serious liability that's not recorded.

6 VICE CHAIR WHITTINGTON: Is that
7 something that we're going to see out of a large or
8 small portion of our applicants?

9 MR. DAVIDSON: I would think very small.
10 I can't imagine you'll see one. I think the Board just
11 needs to always take the stance that we don't accept
12 qualified opinions. I was on the counseling board for
13 many years and believe it or not there are people --
14 there are CPA firms that come to people and say, well, I
15 can't sign a tax return because technically it has a
16 balance sheet and income statement on it, so I need to
17 attach an opinion to a tax return that I can't live by
18 your rules.

19 They've tried that before at the
20 Contractors Board and various states have kind of unique
21 forms. State of Tennessee, you allow people to submit
22 their audit report in lieu of filling out the form.
23 While Alabama, and some other states, they want the form
24 filled out. A lot of accountants like to qualify that
25 and say we can't do it.

1 But here's the flat out rule the
2 counseling board -- I'm sorry the financial standard
3 board is a private organization. It's not a government
4 organization. And the Contractors Board, the IRS, the
5 government agencies, they take precedent over them just
6 because that's what they say this is what accountants
7 should do.

8 You are entitled to ask for what you
9 want in order to get a license. So we had to remind the
10 CPAs on the counseling board for years that the tail
11 doesn't wag the dog. You can attach a statement all you
12 want is the tax form, but the reality is that's what the
13 IRS wants and that's the format they want. And that's
14 how they should get it. The same way with the
15 Contractors Board.

16 I think it's within your power to say,
17 we're not going to grant a license without an
18 unqualified opinion, and that's, in my opinion, spending
19 my lifetime -- Jim's -- I think that we would tell you
20 that it's dangerous to do otherwise.

21 I would qualify this comment about that.
22 Occasionally, you'll get an opinion that has a
23 qualification as to a certain item, that maybe there was
24 just one item that the accountant for some reason
25 couldn't verify and if you investigated it and found out

1 it's so small and insignificant they would still qualify
2 for the license even with that.

3 So I don't want to throw everybody under
4 the bus there, but -- let me say one other thing about
5 your question. Because of the economy, you're going to
6 see more and more qualified opinions this year, not
7 because of FIN 48, but because of something called "The
8 Going Concern Rule." You may have heard of that. In
9 accounting firms they call it the death penalty.

10 But an accounting firm, when they do an
11 audit or a review of a company, they're required to
12 project out for one year and say is it more likely than
13 not this company won't make it another year. That's
14 called "Going Concern."

15 Accounting firms are required by law to
16 do that. If the firm is in such bad shape they have no
17 work next year, their debt's high, they're in default,
18 then you have a spike in going concern opinion.

19 Every recession there's been this kind
20 of spike. So back to '86 and '92, you know, would be
21 the big spike in opinions. People are down on work,
22 their debt's high -- whatever the reason -- so I would
23 answer your question and say I don't think you'll see a
24 spike for FIN 48 because I think the firms that e-mailed
25 you-all are simply wrong and they're over-exaggerated.

1 But you will see a spike in qualified
2 opinions, and that should be a red flag to the Board
3 because that's the accounting firm saying that there's a
4 good probability that this company won't survive. And
5 it is your duty to protect the public. I think that's
6 something you have to react to.

7 MR. LUNDY: I will say about FIN 48,
8 it's been around for two or three years now. It
9 affected public companies. And that's really who it's
10 directed to. They're more likely to have these
11 things -- these ideas -- these schemes that they
12 developed. So they banned disclosing a FIN 48. Whether
13 that's affected them or not that's been on there. It's
14 just this year, after December 15th -- or
15 September 15th -- year's ending, after that, that it's
16 come down to nonpublic companies.

17 That's why the question has been raised
18 now -- and I think there may have been some filter from
19 public companies how they treat it and the cost involved
20 with them to the reality now when we look at our company
21 and say it has no effect on ours. We're aggressively
22 following the code as it exists.

23 MR. DAVIDSON: Let me stress what he's
24 saying. None of these public companies are qualifying
25 their opinion. They're implementing FIN 48. Qualifying

1 your opinion, if you're a public company, same reaction
2 to the stock market, your stock will drop dramatically.

3 But the disclosure says tell us about
4 it. Tell us what you're doing, accrue the liability.
5 These public companies are accruing liability, you know,
6 if they've done something. So we're really talking
7 about the implementation of FIN 48. But the actual
8 questions on the e-mail is that we're not going to
9 implement it, we're going to qualify it; will you accept
10 it if we qualify it? And I would say no.

11 You would accept one if someone
12 disclosed it had a FIN 48. That's good. They're
13 telling you that there's a potential -- more likely than
14 not -- that we're going to owe this sizable number. It
15 has to be material. And that is subject to
16 interpretation. But it's usually 20 percent or more of
17 the equity. A pretty big hit.

18 MEMBER NEAL: So is everyone on the
19 Board of the opinion, then, that we will look closely at
20 any qualified opinion that we get? We'll instruct
21 Matthew to notify the board members if he gets any
22 qualified opinions on it, otherwise we're not concerning
23 ourselves any further.

24 MR. DAVIDSON: Frank, we've always
25 enjoyed working with the Board and if Matt -- or anybody

1 on the Board wants to mark out the names and run it past
2 us, we're always happy to do that, just at least give
3 them a second opinion if we think that maybe that
4 deserves special merit. So consider that an offer from
5 our firm to help if any of your people need it.

6 MEMBER NEAL: Okay. Any other board
7 members have any questions for Mr. Lundy or
8 Mr. Davidson?

9 (Pause)

10 MEMBER NEAL: If not, thank you very
11 much. We appreciate you taking your time since you
12 didn't have anybody to bill this to.

13 (Laughter)

14 VICE CHAIR WHITTINGTON: Moving along.
15 We're going to go into review and approval of items. If
16 you'll look under Tab 4 -- or 5, we've got interviewed
17 and waived applicants.

18 Any questions on the interviewed and
19 waived applicants?

20 MEMBER NEAL: Mr. Hayes and I have one
21 before we approve all these that we'd like to add to the
22 list, subject to interview.

23 VICE CHAIR WHITTINGTON: Okay.

24 MEMBER NEAL: This is a situation where
25 a contractor who has made application for a license to

1 the Board -- it was determined that he had attempted --
2 or at least appeared that he had attempted to pull a
3 permit to build a house for \$283,000 with an estimated
4 sales price of \$401,000 -- or thereabouts, \$400,000
5 plus.

6 Therefore, he was brought in for an
7 interview. And we interviewed this individual and his
8 comments were -- number 1, that he was attempting to get
9 some procedural work out of the way, as for this permit,
10 and to determine if he needed to do anything than what
11 he thought he had to do. But it did appear as though he
12 had a contract to build this house -- or he had a
13 prospect that he was working with to build a house.

14 As it turned out, this individual owns
15 the property and is going to build several spec homes on
16 this property. Obviously, he didn't have a contract, so
17 it's our suggestion to the Board -- he was asking for a
18 \$500,000 limit -- his experience in other areas he's
19 qualified to do, but by virtue of the fact that he did
20 make some sort of attempt to pull a permit, even though
21 he alleges that he was only seeking information, the
22 form is fully completed and filled out.

23 We suggest to the Board that he agree to
24 a consent order for a \$2,000 fine. And upon payment of
25 that fine and the obtaining of his wife's signature on a

1 guarantee agreement -- since it was a cash only
2 statement and he submitted a personal financial
3 statement -- which he alleged was just his assets, but
4 it not being a CPA audit, we could only -- not that we
5 question the truthfulness of his statement -- but we can
6 only assume that it would include assets that his wife
7 may have joint ownership in. So our recommendation to
8 the Board is the consent order for \$2,000 to be paid and
9 the wife's signature on a GA. And once those two things
10 are obtained, then a license be issued and granted.

11 That would be our motion.

12 VICE CHAIR WHITTINGTON: Is there any
13 others?

14 MEMBER NEAL: No.

15 MEMBER TICKLE: Second.

16 VICE CHAIR WHITTINGTON: Any discussion?

17 MEMBER BRODD: We've got an issue with
18 someone else on this list. Right?

19 MEMBER NEAL: Yes.

20 VICE CHAIR WHITTINGTON: Let's get an
21 individual vote on this first.

22 We've got a motion and a second on
23 Frank's.

24 All in favor say "aye."

25 THE BOARD: Aye.

1 VICE CHAIR WHITTINGTON: All opposed,
2 like sign?

3 (Pause)

4 VICE CHAIR WHITTINGTON: Okay. Mark?

5 MEMBER BRODD: Integrated Mechanical
6 Services, LLC. Marvin and I talked to -- I'm not
7 sure -- I've got an e-mail here from Michael, and I'm
8 not exactly sure what I can say or can't say at the
9 meeting, but --

10 MR. DRIVER: I guess what this is --
11 it's a similar situation. There were some issues raised
12 about actions taken before the application was made.
13 And I believe that it was Mr. Brodd's recommendation
14 that a consent order for a thousand dollars be issued
15 and that the license be issued contingent on the payment
16 of that consent order.

17 MEMBER BRODD: You in agreement with
18 that, Marvin?

19 MEMBER SANDRELL: Yes.

20 MEMBER BRODD: That would be our motion.

21 VICE CHAIR WHITTINGTON: All in favor
22 say "aye."

23 THE BOARD: Aye.

24 VICE CHAIR WHITTINGTON: All opposed,
25 like sign?

1 (Pause)

2 VICE CHAIR WHITTINGTON: All right. Any
3 other exceptions?

4 (Pause)

5 VICE CHAIR WHITTINGTON: Then I
6 recommend that we get a motion for acceptance of the
7 interviewed and waived applicants.

8 MEMBER NEAL: So moved.

9 MEMBER TICKLE: Second.

10 VICE CHAIR WHITTINGTON: Any discussion?

11 (Pause)

12 VICE CHAIR WHITTINGTON: All in favor
13 say "aye."

14 THE BOARD: Aye.

15 VICE CHAIR WHITTINGTON: All opposed,
16 like sign?

17 (Pause)

18 VICE CHAIR WHITTINGTON: So moved.

19 Now, we move onto Tab 6 and that would
20 be the revisions.

21 Any questions on the revisions,
22 combinations, increases, name changes? Do I have a
23 motion?

24 MEMBER NEAL: So moved.

25 MEMBER SANDRELL: Second.

1 VICE CHAIR WHITTINGTON: Any discussion?

2 (Pause)

3 VICE CHAIR WHITTINGTON: All in favor

4 say "aye."

5 THE BOARD: Aye.

6 VICE CHAIR WHITTINGTON: Opposed, like

7 sign?

8 (Pause)

9 VICE CHAIR WHITTINGTON: So carried.

10 LLE applicants.

11 MEMBER NEAL: I move for approval of the

12 LLE applicants.

13 MEMBER SANDRELL: Second.

14 VICE CHAIR WHITTINGTON: Any discussion?

15 (Pause)

16 VICE CHAIR WHITTINGTON: All in favor

17 say "aye."

18 THE BOARD: Aye.

19 VICE CHAIR WHITTINGTON: Opposed, like

20 sign?

21 (Pause)

22 VICE CHAIR WHITTINGTON: Motion carries.

23 Home Improvement applicants.

24 MEMBER NEAL: I make a motion for

25 approval of the Home Improvement applicants.

1 MEMBER SANDRELL: Second.

2 VICE CHAIR WHITTINGTON: Any discussion?

3 (Pause)

4 VICE CHAIR WHITTINGTON: All in favor

5 say "aye."

6 THE BOARD: Aye.

7 VICE CHAIR WHITTINGTON: Opposed, like

8 sign?

9 (Pause)

10 VICE CHAIR WHITTINGTON: Motion carries.

11 Now, we'll get into the legal report.

12 Michael?

13 MEMBER NEAL: Where's the transcript?

14 MR. DRIVER: I believe -- my

15 understanding is that the audio was damaged and the

16 court reporter was trying to reconstruct the transcript

17 through other means.

18 MEMBER NEAL: That's reasonable. If you

19 can't hear, I'm sure that's okay.

20 MR. DRIVER: That's just what I was told

21 this morning.

22 Do you want me to go ahead and handle

23 them separately or just go through the whole legal

24 report?

25 VICE CHAIR WHITTINGTON: I would do it

1 as a whole.

2 MR. DRIVER: So the Home Improvement
3 report was recommended to be accepted as written.

4 Residential report, number 4 should read
5 "and voluntary surrender," not "of voluntary surrender."

6 Number 14 was made a formal hearing plus
7 a six-month suspension of license.

8 Number 15 was recommended to close.

9 Number 16 -- and let me know if I'm
10 moving too quickly -- was recommended to close.

11 Number 18 was recommended for a letter
12 of warning.

13 Number 22, the civil penalty was
14 increased to a thousand dollars.

15 Number 24, the civil penalty was
16 decreased to a thousand dollars.

17 Number 25 was recommended to close.

18 Number 33 was recommended to increase
19 from \$500 to \$2,000.

20 Number 40 was recommended to increase
21 from \$1,000 to \$2,500.

22 Number 42 was recommended for a formal
23 hearing, a six-month suspension, and a \$2,000 civil
24 penalty.

25 Number 44 was recommended for a letter

1 of warning.

2 Number 48, in the last line it should
3 say "Respondent 2," not "Respondent 3." Civil penalty
4 for Respondent 1 was increased to \$2,000. Civil penalty
5 for Respondent 2 was increased to \$6,000.

6 Number 49 was recommended for a formal
7 hearing and a \$5,000 civil penalty.

8 Number 51 was increased from \$2,500 to
9 \$5,000.

10 Number 52 was recommended for a formal
11 hearing and a \$2,500 civil penalty.

12 And number 53, it was recommended to
13 maintain the \$500 civil penalty.

14 Commercial Item number 2 was recommended
15 for a formal hearing and a thousand dollar civil
16 penalty.

17 Also, there's one matter that was not on
18 the report that was discussed prior to this meeting
19 where the Respondent was providing -- had entered into a
20 contract to sell a MRI machine to a facility, and part
21 of that contract was for electrical work, and they
22 subbed out the entirety of the electrical work and they
23 are now applying for a license. As they understand,
24 their initial contract said they were going to do the
25 electrical work, even though they subbed out the

1 entirety of the electrical work. And that is being
2 recommended to be authorized for a formal hearing and a
3 \$5,000 civil penalty.

4 And that is all of the recommended
5 changes. If anybody has any questions or has any other
6 comments, I'll be happy to entertain that.

7 MEMBER NEAL: Number 14, would you say
8 again what was decided on that?

9 MR. DRIVER: Yes, sir. It was
10 recommended to authorize it for a formal hearing and to
11 settle by consent form of not less than a six-month
12 suspension.

13 MEMBER NEAL: No fine?

14 MR. DRIVER: No fine was recommended.

15 And, certainly, it's within the Board's
16 jurisdiction if you-all would like to change that. That
17 was the recommendation as it came out of the
18 subcommittee.

19 MEMBER NEAL: It just seems a little
20 unusual to recommend a suspension or a formal -- or a
21 six-month suspension of the license by consent.

22 MEMBER SANDRELL: \$2,000 fine.

23 MEMBER NEAL: Is that what you're
24 recommending?

25 MEMBER SANDRELL: Yes.

1 MEMBER NEAL: I'd recommend some kind of
2 fine.

3 VICE CHAIR WHITTINGTON: Is that in
4 addition?

5 MEMBER SANDRELL: Yes.

6 MR. DRIVER: Okay. Then that will be
7 changed to authorize for a formal hearing, with
8 authority to consent order of a six-month suspension,
9 and a \$2,000 civil penalty?

10 MEMBER NEAL: Yeah. I just don't think
11 that you ought to do all the work that you do for
12 nothing.

13 MR. DRIVER: Okay. Thank you.
14 Any other questions or comments?

15 MEMBER BRODD: Did you do commercial?

16 MR. DRIVER: I did. Commercial number 2
17 was the only one, I believe. It had a recommendation of
18 authorize for a formal hearing, authority to consent
19 order of not less than a thousand dollars. Is that not
20 correct?

21 MEMBER BRODD: You said \$5,000 before.

22 MR. DRIVER: Okay. I thought I had said
23 a thousand dollars. But if you wanted to make it
24 \$5,000, I have no objection.

25 MEMBER BRODD: My recommendation was to

1 send a letter of reprimand.

2 MR. DRIVER: Okay. Then I
3 misunderstood. Subcommittee's recommendation on
4 Commercial number 2 was a letter of warning.

5 MEMBER NEAL: And no fine?

6 MR. DRIVER: No fine. Just a letter of
7 warning. I had a misunderstanding there.

8 VICE CHAIR WHITTINGTON: Any more of
9 your legal report?

10 MR. DRIVER: Nothing further.

11 MEMBER BRODD: Do you need an
12 explanation on number 2?

13 MEMBER NEAL: No. It's -- it seems like
14 that if we're going to have to do all this stuff -- even
15 \$250 -- there should be something that these people
16 would have to pay when they take up all of the Board's
17 time and staff's time and everybody else's time. You
18 know, writing them a letter and spending 44 cents on
19 postage or certified mail -- or whatever -- you know, it
20 just seems like they ought to get some kind of a fine.

21 MR. DRIVER: Legal's recommendation on
22 this one was -- it was discussed because it's fairly
23 clear what happened here -- as it's written. There's
24 not a lot of contention as to, no, we didn't do it.
25 They entered into the contract. The question is just

1 what punishment, given the situation, that the Board
2 feels is appropriate. And the recommendation was the
3 letter of warning.

4 MEMBER BRODD: I'm all right with a \$500
5 fine to go along with it.

6 MEMBER SANDRELL: A thousand dollars.
7 That'll get their attention.

8 MEMBER NEAL: If they're not -- if they
9 just get a letter kind of like it's really not much
10 action on the part of the Board who's taken the time to
11 review it, investigate it, and everything else. I've --
12 I think they should pay something when they violate any
13 provision of any contract licensing laws.

14 MEMBER TICKLE: We're going to bump it
15 up to a thousand, if that's okay?

16 VICE CHAIR WHITTINGTON: We've got a
17 motion for \$500.

18 MEMBER BRODD: I'll withdraw that.

19 MR. DRIVER: Legal will change its
20 recommendation to authority for a formal hearing with
21 penalty not less than a thousand dollars.

22 VICE CHAIR WHITTINGTON: Any other
23 questions on the legal report? Commercial?
24 Residential?

25 (Pause)

1 VICE CHAIR WHITTINGTON: I'll entertain
2 a motion, then, to accept the legal report as revised.

3 MEMBER SANDRELL: So moved.

4 MEMBER TICKLE: Second.

5 VICE CHAIR WHITTINGTON: All in favor
6 say "aye."

7 THE BOARD: Aye.

8 VICE CHAIR WHITTINGTON: Opposed, like
9 sign?

10 (Pause)

11 VICE CHAIR WHITTINGTON: So moved.

12 Now, we're going to move on to our
13 discussion topics. The first topic of discussion is
14 monetary limits and the net worth requirements. If
15 we've got anyone here that's willing to speak to that,
16 come on forward.

17 MR. BROWN: Thank you.

18 VICE CHAIR WHITTINGTON: State your
19 name.

20 MR. BROWN: My name is Jim Brown. I'm
21 with the National Federation of Independent Business,
22 who represents small and independent businesses across
23 the state of Tennessee. We have 85 members. Our
24 average number has between six to ten employees.

25 And this is an issue that

1 Carolyn Lazenby and Michael were very generous with
2 their time in January and gave me a tutorial. I've been
3 with NFIB for five years with two years lobbying. The
4 reason I requested a meeting with them is I heard from
5 several smaller electricians, plumbers, HVAC on this net
6 worth requirement issue -- and let me just say, first
7 off, we're very sensitive to your role in protecting the
8 public. We get that, we understand it, and we're with
9 that.

10 What we did, though, is we asked
11 Ms. Lazenby and her staff -- and I believe she had an
12 intern -- do this over the course of the first
13 quarter -- produce something that was very helpful to us
14 in understanding what's going on in other states. And I
15 think it's something you-all should know about. It's a
16 resource that -- a survey of the states around
17 Tennessee, along with the monetary limits for Alabama
18 and Georgia. So if you-all ever need a resource, she's
19 got it. And I think that's something that -- it's just
20 an offer for you-all.

21 But I think this all -- there's been
22 four or five of my members in the last year that have
23 called me about this and I've also talked to some larger
24 more established electrical contractors that have been
25 through a down cycle before. And I think it's very

1 obvious that we've been through a down cycle.

2 One instance in particular comes to mind
3 in Chattanooga. There was a long-time NFIB member that
4 has 15 employees -- or had 15 employees -- and over the
5 course of this recession -- at least the last time I
6 talked to him -- had four employees. He does business
7 in Alabama, Georgia, and Tennessee. And he is -- he has
8 a little bit of a frustration that he's not able to bid
9 on jobs that he used to be able to bid on before because
10 I think you-all -- there was a requirement in the
11 statute that every two years you've got to go through
12 the net worth's requirement and --

13 VICE CHAIR WHITTINGTON: -- renew your
14 license.

15 MR. BROWN: And your net worth is
16 discovered during that period, correct?

17 VICE CHAIR WHITTINGTON: Correct.

18 MR. BROWN: So this gentleman has seen
19 his net worth plummet. And I think there's been some
20 other calls that we've had as well where the net worth
21 had plummeted.

22 He's a very reputable man, and he's been
23 around for a long time. He's just seen things go south.
24 I think the concern that he has is that he's able to bid
25 on jobs in Georgia and Alabama that he's not able to bid

1 on in Tennessee.

2 That's a fair concern. I brought that
3 to Carolyn, and Carolyn understood that. And she said
4 that at some point you should appear before the Board
5 and talk to them about what you're hearing. That's my
6 sole purpose for being here today.

7 It's more educational, potentially
8 exploratory, but I know -- I believe you-all talked
9 about this last month -- or Memphis two months ago. Is
10 that correct? Is this something that --

11 VICE CHAIR WHITTINGTON: We spoke to the
12 issue, but I will give you a little insight. The
13 monetary requirement is set forth in state statute.
14 It's nothing that the Board can make a vote to change.

15 MR. BROWN: 1976, I believe is when that
16 happened.

17 VICE CHAIR WHITTINGTON: That's
18 something that you'll have to lobby for in the
19 legislature and get the law changed.

20 MR. BROWN: Before I did that I really
21 wanted to appear before you because you're the experts
22 and you have a very important role in this. I don't
23 want to undermine your role. I very much -- on behalf
24 of NFIB members, we respect what you-all are doing.

25 So my purpose for appearing before

1 you-all today was -- I know we would have to file a
2 bill. Representative Susan Lynn and Representative
3 Phillip Johnson are two legislators that have expressed
4 an interest in this. And there are democrats on the
5 other side that have expressed interest in this.
6 Representative Johnny Shaw is one. And I just kind of
7 want to have a brief conversation with you-all about
8 this. Knowing that we don't want to undermine your
9 role, but we also have a concern that -- and I've heard
10 it from this gentleman in Memphis -- he's got an
11 electrical business. He's had it for 35 years. And
12 he's gone through a down cycle in the early '80s. He
13 said it took him a while to get out of that and he
14 couldn't bid on certain jobs because of this law that's
15 been on the books since 1976, I believe is when it was
16 put on there.

17 So it's -- we need the protection, but
18 if there's -- if the pendulum is a little too far this
19 way -- I think what I'm here to discuss with you-all
20 is -- let's not let the pendulum go too far this way and
21 hurt the public. But is there -- after this has been on
22 the books for so long, and knowing what we've been
23 through economically, is there something that you-all
24 would recommend with your expertise that would be
25 reasonable?

1 I've heard some suggestions that I can
2 share with you from some legislators to reasonably get
3 the pendulum back toward the middle so some of these
4 smaller contractors can bid on these jobs without
5 jeopardizing the public. I think that's really why I'm
6 here today.

7 MEMBER NEAL: What would be your
8 suggestion?

9 MR. BROWN: I've heard a few. I'm not
10 the expert. Again, you-all are. But I have talked to
11 some legislators who have a little more expertise -- a
12 lot more expertise than I do.

13 How long has that \$25,000 threshold been
14 there? Is ten times the net worth -- is that the right
15 number? Should it be 15 and we monitor it to see if
16 there's a problem.

17 That's a suggestion from one legislator.
18 I don't know what the answer is, but maybe comparing
19 what we're doing to Georgia and Alabama. I know just in
20 the research that Carolyn's team was able to do that the
21 state of Alabama has five separate licensing agencies
22 and only the commercial building contractors have
23 monetary limits assigned, and they're based on a tiered
24 system. But the other -- electricians, plumbers, and
25 gas fitters -- Board of Heating and Air Conditioning --

1 do not have a monetary limit. That's just -- that's
2 something just to let you-all know.

3 Georgia is similar. Two licensing
4 agencies, the commercial and residential trades are
5 monetary limit with a limited tier for \$500,000 per
6 contract. Monetary limits are not placed on other
7 trades.

8 So Tennessee is doing it a little
9 differently. It's -- again, you've got the folks on the
10 smaller end who are reputable who are going to have a
11 tougher time climbing out of the hole because of the way
12 we set it up, statutorily.

13 What do you-all think? Do you think
14 this is enough of a problem? Are there things that
15 you've been hearing? With your expertise that you've
16 had in the field for years, is there something that
17 you'd suggest? Is this worth revisiting? That's my
18 question to you-all.

19 MEMBER NEAL: In all honesty, I do not
20 do all of them. I think a major portion is what we call
21 "waived" applicants, and seldom ever do you have a
22 problem where our requirements become an issue.

23 Now, that may be because everybody's
24 trying, initially, to get as much of a license as they
25 can possibly get and present the best picture that can

1 be presented as a statement or they filed guarantee
2 agreements -- personal guarantees and financial
3 statements -- or whatever.

4 The problem, as I see it, is if we lower
5 our standards in the area that you're talking about --
6 that's predominantly in smaller electrical, plumbing,
7 and HVAC contractors -- that's where you get into a
8 problem with jeopardizing public safety because those
9 people are generally working on the smaller projects.
10 So a \$5,000 electrical job on a house, and yet if they
11 choose to use improper wiring -- and it's because they
12 really can't afford to do anything else -- now, I heard
13 you say increase it. You know, from the 10 percent to
14 the 15 percent.

15 MR. BROWN: Fifteen times as opposed to
16 ten times. I really think you're right. I know in just
17 bidding some things around my house that you're very
18 sensitive to somebody doing it right and not leaving the
19 job and just -- the gentleman I'm talking about -- and
20 the folks that I'm talking about are folks that have
21 been through the recession and are reputable and have
22 been around for a while and they have been bidding on
23 larger jobs. And because of what's happened in this
24 economy they've gone -- 15- to 4- is a pretty
25 significant drop in this gentleman's payroll. He's

1 having a difficult time, like a lot of small companies
2 getting lines of credit.

3 You get that -- you get your license
4 renewed and your net worth is at a certain level and a
5 year from now you're kind of getting back on your feet,
6 but you can't get the line of credit. That's going on
7 in our economy right now. And that's the problem that
8 some of these folks that might have been mid-sized --
9 you might call them that are now smaller -- they're
10 trying to get back to mid-sized and they can't.

11 And that's -- and they view it as
12 anticompetitive -- which I'm not sure I'd go that far.
13 But those are the kinds of things that I'm hearing
14 from -- I bring it to your attention as to that's what
15 I'm hearing from the grassroots from some of these
16 entities that fit in a certain category.

17 I don't have a solution today, but I
18 do -- I really want this feedback before I talk to the
19 Legislature about potential solutions.

20 MEMBER NEAL: Not to disagree with you,
21 but to play the devil's advocate, when this board would
22 take that type of an approach and a company that's in a
23 downward spiral, so to speak, or they reach here and
24 they still want to do here, if we allow them to do that
25 we grant them -- to come out here and buy from suppliers

1 who may not get paid because of this limited working
2 capital or this net worth position that we all of a
3 sudden say, well, okay, you've been doing it and you're
4 a good guy and just because you've done \$100,000 work
5 done before, and now you've got 20,000, we're going to
6 go ahead and let you do this kind of work --

7 MR. BROWN: We're sensitive to that.
8 That's more specific to my initial statement. What I
9 would ask is your expertise in this. Why is Georgia and
10 Alabama doing it differently? They have the bonding
11 requirement. They have the educational requirements.
12 That's -- I think that's pretty much what they have for
13 these entities -- these electricians and plumbers and
14 HVAC.

15 In Tennessee it chose to do it
16 differently long before you-all were in your roles --
17 and I think it begs that question why did Tennessee do
18 that? Why did it go the extra step and put the net
19 worth requirement at ten times and all that.

20 MEMBER TICKLE: It's tough to get bonded
21 in the state of Tennessee. If we were bonded, our
22 people would really be hollering. If you can't get that
23 bond, you can get a line of credit, but you're not going
24 to get that bond. It's hard as heck to get bonded.

25 MR. BROWN: I agree. The example that

1 comes to mind in addressing exactly what you just said,
2 is Mr. Shaw is a member of a church and he's -- they had
3 a very large job. \$2 million job. And I don't know
4 specifically what it was, but it was a big deal for the
5 church.

6 Mr. Shaw knew the contractor that could
7 take care of that job and he was frustrated that this
8 person who had been in the community for 30-some-odd
9 years could not bid on the job. So what the church did
10 was they pulled some money together -- I think it was
11 \$70,000, to buy the bond so the gentleman could do the
12 job. That was pretty amazing, and doesn't go on very
13 often. But it did happen.

14 Mr. Shaw did bring legislation to set
15 up -- and it was in the budget -- the Tennessee budget
16 this last year to allow bonding for contractors, small
17 minority owned. But it was pulled out during the
18 negotiations between the Legislature and the Executive
19 Branch. But it was in there to address it. But I hear
20 you.

21 MEMBER TICKLE: It's tough.

22 MEMBER NEAL: I don't know that lowering
23 our standards to subscribe to other states' standards is
24 the direction we ought to be going in. Particularly
25 when -- if you want to do standards. Try to do business

1 in Florida. Our testing requirements, they're minimal
2 in relation to what's required of contractors in
3 Florida. It's a really tough state to get a license.
4 They make it as tough as they possibly can.

5 I think Tennessee is trying to be
6 somewhere in the middle. Maybe we don't want to be the
7 Georgia or the Alabama, but we don't want to be the
8 Florida either. We don't want to discourage the
9 industry by being so hard to get a licensure that you
10 limit the participation of the contractors. But it is,
11 as an example, that way in Florida. It's tough.

12 MR. BROWN: Has the \$25,000 been there
13 since the '70s as well?

14 VICE CHAIR WHITTINGTON: As far as I
15 know.

16 MEMBER TICKLE: It was 50- and it
17 dropped.

18 MR. BROWN: It was 50?

19 MEMBER TICKLE: Yes.

20 MR. BROWN: When did it drop?

21 MEMBER TICKLE: '72, maybe.

22 MR. BROWN: I guess that begs the
23 question with what's happened with the economy, with the
24 inflation over a period of time, is that something worth
25 revisiting? That will allow some of these folks to get

1 into some of these jobs that are still small, but a
2 little bit bigger than that. That will help them get
3 back on their feet.

4 MEMBER NEAL: You mean to go back up to
5 50?

6 MR. BROWN: Or 35- or something.

7 VICE CHAIR WHITTINGTON: I think that
8 issue was noted a couple of years ago before the
9 Legislature. It didn't go very far.

10 MEMBER SANDRELL: It's just like Frank
11 was talking about that maybe Georgia and Alabama need to
12 come up to Tennessee's standards.

13 MEMBER HAYES: I remember prior to '76
14 when you had to renew your license every year. So in
15 some ways it's more lenient now to do a two-year period
16 than it is every year.

17 MR. BROWN: How often are you-all seeing
18 these jobs that are below \$25,000? How often are you
19 seeing problems? What percentage?

20 MEMBER NEAL: We don't see them a lot.
21 Home Improvements see them though.

22 MR. BROWN: Is there an estimate of how
23 many times out of 100 there's an issue? I could follow
24 up with you about that. Because I think it does beg the
25 question. And, again, if the Legislature looked at it a

1 few years ago, I could ask around. But -- you know,
2 find out the reasons why. Because I wasn't here for
3 that.

4 It does beg those questions, and I will
5 ask around and keep you posted.

6 VICE CHAIR WHITTINGTON: Anything else?

7 MR. BROWN: No, sir. I appreciate it.
8 I just wanted to let you know what we're hearing.

9 MEMBER NEAL: And we're interested in
10 what the Nashville Federation Independent people have to
11 say about what's going on out there. You may be hearing
12 things that we're not.

13 MR. BROWN: Worker's Comp --
14 construction subcontractors -- there are a lot of phone
15 calls right now into our office, e-mails -- and also in
16 the Legislature's office. And you-all probably heard
17 about requiring subcontractors to carry Worker's Comp on
18 themselves. That goes into effect at the end of this
19 year.

20 And we believe, as do the home builders,
21 that we've seen them go too far on that. We've got a
22 lot of good apples out there that are covering their
23 employees. They're not calling themselves
24 subcontractors, and then calling their day laborer a
25 subcontractor, and -- you know, just unscrupulous folks.

1 There are good operators out there that
2 are keeping Worker's Comp on their employees. And the
3 general contractor knows that. And they can't afford
4 \$6,000 right now to -- in this period when they don't
5 have any business.

6 So it's a major issue right now that's
7 out there, and we're talking to a lot of people about
8 it.

9 MEMBER TICKLE: That's more of a problem
10 than the limit you brought up. That's where the
11 problem -- you're going to see more contractors go out
12 of business because of that. Especially the smaller
13 people. They can't afford -- it's too high and it
14 shouldn't have got passed.

15 MR. BROWN: It's a crisis. And I agree
16 with you, Mr. Tickle.

17 One thing that was good that did happen
18 through the Home Builders and Mr. Pitts earlier is there
19 was a bill -- there was a couple bills. The first bill
20 was postponed for three years just because of the
21 economy, and we weren't going to get that passed because
22 they weren't hearing from the grassroots yet.

23 After the session, when the phone calls
24 started coming, and they started hearing we may have had
25 a different resolve. What did happen was Mr. Pitts and

1 the Home Builders and NFIB -- Mr. Pitts had a very good
2 idea to establish a new Worker's Comp classification
3 code that gets the sole proprietor and the LLC officer
4 under a new LCM -- 4.11 is what they've agreed to. That
5 actually pulled the bill because the Department of
6 Commerce didn't want to set precedent. And so it was
7 done by rule.

8 It's being done now. So these
9 managers -- 4.11 as opposed to 13 or 18 is better. But
10 we still have problems.

11 MEMBER TICKLE: We appreciate your help.

12 MR. BROWN: Thank you.

13 VICE CHAIR WHITTINGTON: The next item
14 on the agenda is updating codes, as it relates to the
15 PSI exams. This is just something for the Board to
16 think about and discuss. PSI wants us to look into --
17 considering revising our codes.

18 Right now the code test that they take
19 is based on 2003, I think. And with the newer codes
20 coming out the sixes -- the '09s -- what do we, as a
21 board, want to do?

22 I've talked with several of you about
23 it. I'm really not ready to think that we need to
24 change that. We've got a lot of folks in our state that
25 still operate under the 2003 code. Until we get the

1 State to approve the statewide code, bring it up -- a
2 new code, I think we need to stay under the code that we
3 are under.

4 Any thoughts? Discussions?

5 MEMBER SANDRELL: I'll agree.

6 MEMBER TICKLE: Agree.

7 VICE CHAIR WHITTINGTON: At least give
8 me a little printout, by in large all across the
9 state -- if the larger Metro areas -- if they are still
10 in the '03 and throughout most of the building and
11 trades. So that's just a little bit about that.

12 Moving along quickly. In the very back
13 of your book, the November meeting -- if everybody will
14 put that on their calendar -- is November 17th and 18th
15 in Knoxville.

16 Do we know where yet?

17 MS. ROBERTS: Marriott Grand Plaza.

18 VICE CHAIR WHITTINGTON: It will be a
19 two-day because we didn't have any formal hearings at
20 this meeting. We will probably have -- maybe one?

21 (Laughter)

22 VICE CHAIR WHITTINGTON: We've got
23 formal hearings.

24 MR. DRIVER: Between one and three.

25 VICE CHAIR WHITTINGTON: I've got to say

1 one thing about the 2010 schedule, I'd like to see us in
2 Johnson City.

3 MR. ROBERTS: Which one? The September
4 meeting?

5 VICE CHAIR WHITTINGTON: If at all
6 possible.

7 So that brings you up to date on the
8 November board meeting and the 2010 board meetings.

9 Any other --

10 MEMBER NEAL: Are you going to chair in
11 2010?

12 VICE CHAIR WHITTINGTON: Yes.

13 MEMBER NEAL: Then you can have it
14 wherever you want to have it. If you want it in Johnson
15 City, you have it in Johnson City.

16 VICE CHAIR WHITTINGTON: Any other
17 business? Come before the Board.

18 (Pause)

19 VICE CHAIR WHITTINGTON: Then I'll
20 entertain a motion to adjourn.

21 MEMBER SANDRELL: So move.

22 MEMBER TICKLE: Second.

23 VICE CHAIR WHITTINGTON: All in favor
24 stand on feet.

25 We're adjourned.

1 (End of the proceedings.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF TENNESSEE)
4 COUNTY OF MONTGOMERY)

5

6 I, Tracy Foley-Wilkes, court reporter and
7 notary public for the state of Tennessee,

8

9 DO HEREBY CERTIFY that the foregoing
10 transcript of the proceedings were taken on the date and
11 place set forth in the caption thereof; that the
12 proceedings were stenographically reported by me; and
13 the foregoing proceedings constitute a true and correct
14 excerpt of said proceedings.

15

16 I FURTHER CERTIFY that I am not related to
17 any of the parties named herein, nor their counsel, and
18 have no interest, financial or otherwise, in the outcome
19 of events of this action.

20

21 IN WITNESS WHEREOF, I have hereunto
22 affixed my official signature and seal of office this
23 the 9th day of November, 2009.

24

25 Tracy Foley, Notary Public
State of Tennessee

My Commission Expires: May 11, 2011.